

November 22, 2006

SENT VIA E-MAIL, FACSIMILE AND U.S. MAIL

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Re: City of Auburn Comments on Draft Lake Tapps ROE dated 9/22/06

Dear Sirs:

The Department of Ecology's ("Ecology") draft Report of Examination ("ROE") for the Lake Tapps Water Supply Project ("WSP") dated September 22, 2006, recognizes that **"water availability for meeting future population and economic growth in the central Puget Sound is becoming increasingly scarce."** ROE at 81 (emphasis added). At the same time, however, Ecology essentially has abdicated its regulatory role in ensuring responsible development of regional water supply sources and allowed Cascade Water Alliance ("Cascade") to dictate unilaterally:

In the absence of a regional evaluation comparing the merits of various supply options, the Lake Tapps supply option was evaluated on its own merit. From the perspective of providing a supply to meet the future demand of the CWA members, we note that the Lake Tapps project is the only supply option in which PSE or CWA is listed as the lead agency. Demonstration of "need" is therefore based on evaluation of CWA's projected demand versus its existing supplies and other contracted supplies.

ROE at 25. From this premise -- review in an artificial vacuum -- Ecology concludes that "overriding considerations of public interest" justify allowing Cascade to tap water from

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a closed river system and export it out of its basin of origin. Shorn of its window dressing, the ROE simply acquiesces in a political decision by this consortium of east-side cities to break their ties with established water suppliers with the capability to serve far into the future, such as the City of Seattle, so that Cascade members can build their own empire. Ecology's premise and its conclusion are fundamentally flawed—from both legal and policy perspectives. If finalized, the ROE will leave the City of Auburn, which depends on the source of supply which Cascade plans to tap and export, no choice but to vigorously oppose the Cascade plan.

Auburn, located in the Green and White River Valleys, is a major water purveyor in southern King County and northern Pierce County. The Auburn water system is supplied by groundwater wells and springs. Auburn's water system serves approximately 12,014 direct service connections, including parcels owned by the Muckleshoot Indian Tribe; these connections represent a total population of approximately 60,000. Auburn is also a regional gathering place, e.g., Emerald Downs, MIT Casino, where there is a water demand that does not appear to have been addressed in the analysis. In addition, the City is responsible for providing water on a wholesale account basis to neighboring jurisdictions. Auburn's current and future water supply depends, in large part, upon the White River and Lake Tapps. Lake Tapps is located just south of the City and the White River, which feeds Lake Tapps, flows across the southern portion of the City. Thus, removal of water from the White River/Lake Tapps system may well impact Auburn's existing water rights and Auburn's ability to meet its water needs.

Pursuant to the Growth Management Act, RCW Ch.36.70A, Auburn must plan to meet future water demand. Specifically, Auburn anticipates that by the year 2020 it will be serving water to a population of 63,800 (not including existing or future wholesale water customers). To meet growing demand, Auburn must secure additional water by 2015.

Auburn is trying to find a solution, but it cannot do so alone. The City has implemented rates that reward water conservation, has provided education on wise use of water and will continue to emphasize conservation measures as an important element of water resource needs. For years, the City has urged Ecology and Cascade to look at the "big picture" and give consideration to the regional implications of the proposed WSP, including the needs of in-basin purveyors who would be negatively impacted by the proposed WSP. On January 5, 2006, Auburn filed a new water right application with the Department of Ecology illustrative of its future needs. The City has invited Cascade to work together to ensure that the region's water resources are developed and utilized in a responsible manner that ensures adequate water supply for all. Auburn has asked Ecology to facilitate these efforts rather than simply validate Cascade's plan. The current draft ROE disregards all of these efforts.

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Most remarkable about Ecology's new draft ROE (dated 9/22/06) is that it fails to acknowledge at all Auburn's existing water rights, does not recognize Auburn's emergent need for additional water rights, makes no mention of the implications of the proposed WSP on future water right applications in the basin, refers not at all to the connection between Auburn's water supply sources and the White River/Lake Tapps, and includes no analysis whatsoever of impairment to Auburn's water rights. Instead it presents two conclusory sentences indicating that Ecology is aware of no potential impacts and goes on to discuss only potential impairment to tribal water rights. ROE at 83. Without examining impairment to Auburn's water rights, how can Ecology possibly conclude there is none?

The new draft ROE also fails to address many of the core legal concerns previously expressed by the City in its successful appeal to the Pollution Control Hearings Board ("PCHB") of the prior DOE decision in this matter. More than two years ago, that original Lake Tapps Report of Decision was remanded back to Ecology by the PCHB for further consideration in light of Puget Sound Energy's ("PSE") cessation of hydropower operations. Although the City would like to be able to support the new draft, it cannot do so when it suffers from the same legal infirmities as its predecessor. For example, the ROE does not explain how the "overriding considerations of public interest" exception, which by its express terms is limited to "withdrawals," can be utilized here to authorize a proposed diversion of surface water from the closed White River. Although the City and interested Tribes specifically identified this and many other legal concerns in the prior PCHB proceedings, Ecology's latest ROE ignores most without so much as a mention. Rather than repeating these concerns here, the City commends to Ecology the appeals filed in the prior PCHB litigation and their detailed statement of legal issues—most of which still remain unresolved by the current ROE.

Equally disappointing is that, although Ecology has followed up on some aspects of the PCHB's mandate to evaluate the proposed WSP in the absence of hydropower, it has clearly not done so in several key respects--despite having had more than two years to do so. For example, Ecology's latest ROE continues to substantially rely on the old SEPA analyses, which assumed continued hydropower operations. ROE at 23-24. In addition, the ROE incorporates the hydropower scenario as part of the baseline for evaluating the impact of the WSP on the White River, even though hydropower operations have ceased. *See, e.g.*, ROE at 35, (discussing historical average flows with hydropower and concluding that the WSP would result in a "tremendous benefit to the river" when compared to historical hydropower flows).

The water quality data in the ROE is not complete. It does not address chemical, petroleum and biological contamination of the Lake itself. It concentrates on the effects

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on the White River. Lakeside residents intend to use the lake for recreational purposes, and intend to continue using their individual septic systems and chemicals for landscaping and pest control.

Ecology has also decided not to provide the public with any draft of its decision regarding PSE's application to add recreation and maintenance of water quality as purposes of use to its hydropower water claim. This is especially remarkable since Ecology's draft ROE specifically provides, "The uses under the water right claim, including those uses applied for in the change, form the Baseline for comparison with the WSP." ROE at 19 (emphasis added). As Ecology knows, Auburn protested the change application at issue by letter dated January 27, 2006. Now, Ecology is relying on that un-issued and un-circulated "change" decision as part of the baseline to move the ROE forward. This is exactly what Auburn cautioned against in its January 27, 2006 protest letter:

the water [requested in the change application] will largely be used to "underwrite" the consumptive municipal water rights—either directly or as "mitigation" water that helps alleviate negative impacts of the consumptive water supply project.

Auburn Protest at 7. How can the public be expected to comment fully on the draft ROE when Ecology has not provided the draft change decision, which forms part of the baseline, for consideration? And, nothing in the ROE explains how PSE's non-consumptive hydropower right and other associated non-consumptive uses can, in essence, be converted into a consumptive water right.

Auburn again invites Ecology and Cascade to work with it in an effort to resolve these difficult regional water supply issues and to ensure adequate water supply for all water purveyors in the region.

Sincerely,

A handwritten signature in black ink, appearing to read "P. B. Lewis", with a long horizontal flourish extending to the right.

Peter B. Lewis, Mayor